

Senator Christopher J. Dodd
Vice-Chair,
Special Committee on the Year 2000 Technology Committee
Testimony on Year 2000 Litigation before the Senate Commerce Committee
February 9,1999

Thank you, Mr. Chairman, for recognizing the importance of the Year 2000 Technology Problem and the challenges it poses to our nation's economy.

Mr. Chairman, while leaders of countries, corporations and citizens are struggling to understand the Year 2000 technology problem (Y2K). They are receiving a crash course in the fragile mechanics of information technology. Our economy is like a digital mosaic --a million critical pieces -- held in place by interconnectivity. While this interconnectivity has made us strong and efficient, it has also made us vulnerable. Y2K could crack this fragile mortar of connectivity.

Y2K can best be described as a moving target for government and industry. 1999, is going to be a year of uncertain expectations and unquestionably, it will be a year of certain consequence. On December 31,1999 we will experience an unusual time of transition. It is very unclear what will happen. It is our sincere hope that this date will be a celebration of a job well done. However, there will likely be some inconveniences or disruptions in our country. And while we don't anticipate massive cascading failures in the United States, we could well be awash in annoying disruptions. Unfortunately, the global picture is bleaker. Many of our trading partners are only in the initial stages of dealing with the Y2K problem.

When the Special Committee on the Year 2000 Technology Problem began last year, there were no assessments of this nation's most critical economic sectors. From the very beginning, the Committee has practiced a policy of prevention by choosing to encourage industry sectors to move beyond

reticence to remediation. After all, solving the Y2K problem and developing business continuity plans are essential elements in preventing litigation.

Throughout the examination of different economic sectors by the Y2K Committee, there has been a single sobering message, "More information is needed." In order to fix the problem and prepare contingency plans, businesses and organizations repeatedly asked for help in sharing information. Concerns about liability were clearly impeding the flow of information. Senator Bennett and I introduced "*The Year 2000 Information Readiness Disclosure Act*", which was signed into law in October of 1998. The Y2K Committee and Judiciary Committee worked closely with different industry factions to build consensus. In a bipartisan approach, the Y2K and Judiciary Committees worked with the President's Year 2000 Council, and industry to ensure that "*The Year 2000 Information Readiness Disclosure Act*" facilitated the exchange of quality information needed by industry and government.

It has been suggested that as a result of Y2K, the U.S. could easily find itself witnessing a huge surge in litigation. This potential litigious bloodletting could have long-term consequences on the economic well being of our economy. Estimates on the cost of litigation range from \$250 billion to \$1 trillion dollars. We must be careful that an avalanche of lawsuits does not smother American corporations and bury their competitive edge. A maelstrom of class action lawsuits could have long-term consequences on the American economy and the American people. The rush to file lawsuits might curb the future economic development in a number of different sectors.

Therefore Mr. Chairman, I believe that there is a need for Y2K litigation reform legislation, but not just any legislation. Clearly, we need a bipartisan bill. We need a narrowly crafted, well-structured and easily understandable bill.

Indeed, within the Banking Committee, I am on record for supporting significant securities litigation reform. Our 1995 bill, which was passed, despite veto by the White House, spoke to definitive and repetitive litigation abuse. At that time the legal system was no longer an avenue for aggrieved investors seeking justice and restitution. Instead, it had become a pathway for a few enterprising attorneys to manipulate legal procedures for their own profit. This profit came at the expense and the detriment of legitimate companies and investors across the nation. The crucial factor, which drove the Securities Reform legislation, was a clear-cut pattern of abusive practices.

In other words, I have strongly supported litigation reform efforts in the past. I worked with Senator Gramm and Senator Domenici to draft careful and narrowly drawn legislation. All the while we were mindful to protect the rights of shareholders.

Important public policy decisions like this cannot hinge on conjecture. It is prudent that we ask for facts. The estimated costs of Y2K litigation boggle the mind. As I mentioned before, they range from \$250 billion to \$1 trillion dollars. But these are merely estimates based largely on speculation.

It has been said that small business is the biggest business in America. Small start-up companies particularly, high-tech firms and biotech firms, have demonstrated that they are the foundations for economic growth in the 21st century. But these firms are vulnerable. A recent National Federation of Independent Businesses (NFIB) survey on small business indicated that the many businesses still are not addressing the Y2K problem. Senator Bennett and I are working with Senator Bond to amend current Small Business Administration (SBA) regulations, which will make it easier for small businesses to access funds in order to complete remediation and develop contingency planning. It is our hope that as small businesses prepare more and have the funds to do so, they will ultimately face less exposure to litigation.

Therefore, while we are rushing to solve the Y2K problem and the policy issues therein, we should above all strive to enter the next century with a sense of vision, and this vision should include a prudent analysis of the looming challenges of potential Y2K litigation. I assure you that no one wants to begin the next millennium by trading a vision of the future for a subpoena.